IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5411 OF 2005.

Gajraj (B.C) Gruha Nirman Malki-
Sahakari Society Ltd., Miraj,
Dist.Sangli through Chairman
Krishna Ganapati Naik, Age: 59 years,
Occ.: Retired, R/o.Sushil-Krishna
237-B, Sough Shivajinagar, Sangli. ... Petitioner

Versus.

1. Smt.Sonubai Tamanna Vantmure,
   Age: 80 yrs. Occ.: Household,
2. A.T.Vantmure, Age: 68 years,
   1 & 2 residents of "Pitashri",
   Complex, Vantumure Corner,
   Sangli-Miraj Road, Miraj,
   Dist. Sangli.
3. The State of Maharashtra
   (Trrough the Collector,Sangli). ... Respondents.

Shri Anilkumar Patil for the Petitioner.

Shri S.S.Patwardhan for the Respondent No.2.

Shri M.H.Solkar, A.G.P. for Respondent No.3.

CORAM : ABHAY S.OKA, J.

DATED : 12th June, 2007.

ORAL JUDGMENT.:

1. Heard the learned Advocates appearing for the parties. On 13th September 2005 notice for final disposal was issued at admission stage. The Petitioner is the original Plaintiff. A civil suit filed by the Petitioner/Plaintiff was dismissed for default. An application was made by the Petitioner for restoration of the suit. There was a delay in filing the Application. Therefore, an application for condonation

of delay was taken out. The parties were permitted to lead evidence on the said application. By judgment and order dated 9th March 2005, the said application was rejected by the trial Court by holding that the Applicant has not established sufficient cause for condonation of delay of two years ten months and 25 days.

2. The learned Advocate appearing for the Petitioner submitted that the date of knowledge of dismissal of the suit is 6th September 2002 and the application for restoration was made on 23rd September 2002. He submitted that the Petitioner-society has been established with the object of providing housing for nomadic tribes and other backward sections of the society. He submitted that considering the fact that the suit was dismissed for default, the trial Court should have taken a justice oriented approach and condoned the delay. The learned Advocate for the 2nd Respondent submitted that this is a case of gross negligence on the part of the office bearers of the Petitioner-society. He pointed out that after the suit was dismissed for default, various steps have been taken by the 2nd Respondent. The lay out plan has been approved and the suit property has been divided into various plots. He submitted that the work of improvement was carried out in the suit property by the

2nd Respondent and as the value of the property has been substantially enhanced, the application for restoration was filed.

3. I have considered the submissions. Case made out by the Petitioner in its application is that on 12th October 1999 when the suit was dismissed for default, none of the office bearers were aware of the same as the Advocate appointed by the Petitioner had informed the representative of the Petitioner not to attend the Court on every date. As nothing was heard from the Advocate, an enquiry was made with the Advocate on 6th September 2002 when it was realised that the suit was dismissed for default.

4. The learned trial Judge has referred to the submissions made by the learned Advocate for the Petitioner on the basis of the socalled admission of the 2nd Respondent. The learned trial Judge held that there was no satisfactory explanation for delay.

5. After having considered the averments made in the Application and reply filed by the 2nd Respondent, I am of the view that the learned trial Judge ought to have taken a liberal view of the matter and condoned the delay, subject to payment of heavy costs by the Petitioner. This is a case where the suit was dismissed

for default as both the Petitioner and its Advocate were absent. This is not a case where the Advocate had made the Petitioner aware of the date fixed in the suit and despite of knowledge of the date fixed, no one appeared in Court on behalf of the Petitioner Considering the length of delay, this is a fit case for awarding costs of Rs.7500/-.

6. The notice issued to 1st Respondent is returned back as he has already died. The cause title of the Application for condonation of delay filed by the Petitioner shows that the 1st Respondent was dead and the 2nd Respondent was shown as the heir of the 1st Respondent. Therefore, the Petitioner will have to pay costs quantified at Rs.7500/- to the 2nd Respondent.

7. Hence the following order is passed:

(i) The impugned Judgment and order dated 19th March 2005 is quashed and set aside and Misc.Application No.142 of 2000 is allowed subject to the Petitioner paying costs of Rs.7500/- to the 2nd Respondent within a period of six weeks from today. The deposit of the amount of costs with the trial Court within the stipulated period will be treated as sufficient compliance.

(ii) Costs will be condition precedent and if the compliance is not made the impugned order will stand.

(iii) Rule is accordingly made absolute in the above terms.

(iv) Parties to act on an authenticated copy of this order.

Judge.